

CONFERENCE COMMITTEE REPORT DIGEST FOR ESB 169

Citations Affected: IC 5-14-3-4.

Synopsis: Public meetings and public records. Allows a governing body in an executive session to receive information about misconduct and discuss the status of a school bus driver, who is an independent contractor, before the governing body makes a determination. Allows a governing body to provide public notice to the media through the United States mail, by electronic mail, or by fax. Provides that the factual basis of a disciplinary action in which final action has been taken resulting in the suspension, demotion, or discharge of a public employee is a public record. **(This conference committee report provides that the factual basis of a disciplinary action in which final action has been taken resulting in the suspension, demotion, or discharge of a public employee is a public record. This conference committee report makes the following changes to ESB 169: (1) Requires the factual basis of disciplinary action to be accessible to the public, instead of "information concerning findings of fact and decisions in a disciplinary action". (2) Provides that the disciplinary action must result in suspension, demotion, or discharge in order for the record to be a public record, instead of resulting in being disciplined or discharged.)**

Effective: Upon passage; July 1, 2003.

Adopted

Rejected

CONFERENCE COMMITTEE REPORT

MR. SPEAKER:

Your Conference Committee appointed to confer with a like committee from the Senate upon Engrossed House Amendments to Engrossed Senate Bill No. 169 respectfully reports that said two committees have conferred and agreed as follows to wit:

that the Senate recede from its dissent from all House amendments and that the Senate now concur in all House amendments to the bill and that the bill be further amended as follows:

- 1 Delete everything after the enacting clause and insert the following:
- 2 SECTION 1. IC 5-14-1.5-5, AS AMENDED BY P.L.90-2002,
- 3 SECTION 17, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 4 JULY 1, 2003]: Sec. 5. (a) Public notice of the date, time, and place of
- 5 any meetings, executive sessions, or of any rescheduled or reconvened
- 6 meeting, shall be given at least forty-eight (48) hours (excluding
- 7 Saturdays, Sundays, and legal holidays) before the meeting. This
- 8 requirement does not apply to reconvened meetings (not including
- 9 executive sessions) where announcement of the date, time, and place
- 10 of the reconvened meeting is made at the original meeting and recorded
- 11 in the memoranda and minutes thereof, and there is no change in the
- 12 agenda.
- 13 (b) Public notice shall be given by the governing body of a public
- 14 agency by:
- 15 (1) posting a copy of the notice at the principal office of the public
- 16 agency holding the meeting or, if no such office exists, at the
- 17 building where the meeting is to be held; and
- 18 (2) ~~depositing in the United States mail with postage prepaid or by~~
- 19 delivering notice to all news media which deliver by January 1 an
- 20 annual written request for such notices for the next succeeding
- 21 calendar year to the governing body of the public agency. **The**
- 22 **governing body shall give notice by one (1) of the following**

methods:

(A) Depositing the notice in the United States mail with postage prepaid.

(B) Transmitting the notice by electronic mail.

(C) Transmitting the notice by facsimile (fax).

If a governing body comes into existence after January 1, it shall comply with this subdivision upon receipt of a written request for notice.

In addition, a state agency (as defined in IC 4-13-1-1) shall provide electronic access to the notice through the computer gateway administered by the intelnet commission under IC 5-21-2.

(c) Notice of regular meetings need be given only once each year, except that an additional notice shall be given where the date, time, or place of a regular meeting or meetings is changed. This subsection does not apply to executive sessions.

(d) If a meeting is called to deal with an emergency involving actual or threatened injury to person or property, or actual or threatened disruption of the governmental activity under the jurisdiction of the public agency by any event, then the time requirements of notice under this section shall not apply, but:

(1) news media which have requested notice of meetings must be given the same notice as is given to the members of the governing body; and

(2) the public must be notified by posting a copy of the notice according to this section.

(e) This section shall not apply where notice by publication is required by statute, ordinance, rule, or regulation.

(f) This section shall not apply to:

(1) the department of local government finance, the Indiana board of tax review, or any other governing body which meets in continuous session, except that this section applies to meetings of these governing bodies which are required by or held pursuant to statute, ordinance, rule, or regulation; or

(2) the executive of a county or the legislative body of a town if the meetings are held solely to receive information or recommendations in order to carry out administrative functions, to carry out administrative functions, or confer with staff members on matters relating to the internal management of the unit. "Administrative functions" do not include the awarding of contracts, the entering into contracts, or any other action creating an obligation or otherwise binding a county or town.

(g) This section does not apply to the general assembly.

(h) Notice has not been given in accordance with this section if a governing body of a public agency convenes a meeting at a time so unreasonably departing from the time stated in its public notice that the public is misled or substantially deprived of the opportunity to attend, observe, and record the meeting.

SECTION 2. IC 5-14-1.5-6.1, AS AMENDED BY P.L.37-2000, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 6.1. (a) As used in this section, "public official" means a person:

- 1 (1) who is a member of a governing body of a public agency; or
- 2 (2) whose tenure and compensation are fixed by law and who
- 3 executes an oath.
- 4 (b) Executive sessions may be held only in the following instances:
- 5 (1) Where authorized by federal or state statute.
- 6 (2) For discussion of strategy with respect to any of the following:
- 7 (A) Collective bargaining.
- 8 (B) Initiation of litigation or litigation that is either pending or
- 9 has been threatened specifically in writing.
- 10 (C) The implementation of security systems.
- 11 (D) The purchase or lease of real property by the governing body
- 12 up to the time a contract or option to purchase or lease is
- 13 executed by the parties.
- 14 However, all such strategy discussions must be necessary for
- 15 competitive or bargaining reasons and may not include competitive
- 16 or bargaining adversaries.
- 17 (3) For discussion of the assessment, design, and implementation
- 18 of school safety and security measures, plans, and systems.
- 19 (4) Interviews with industrial or commercial prospects or agents of
- 20 industrial or commercial prospects by the department of
- 21 commerce, the Indiana development finance authority, the film
- 22 commission, the Indiana business modernization and technology
- 23 corporation, or economic development commissions.
- 24 (5) To receive information about and interview prospective
- 25 employees.
- 26 (6) With respect to any individual over whom the governing body
- 27 has jurisdiction:
- 28 (A) to receive information concerning the individual's alleged
- 29 misconduct; and
- 30 (B) to discuss, before a determination, the individual's status as
- 31 an employee, a student, or an independent contractor who is:
- 32 (i) a physician; **or**
- 33 (ii) **a school bus driver.**
- 34 (7) For discussion of records classified as confidential by state or
- 35 federal statute.
- 36 (8) To discuss before a placement decision an individual student's
- 37 abilities, past performance, behavior, and needs.
- 38 (9) To discuss a job performance evaluation of individual
- 39 employees. This subdivision does not apply to a discussion of the
- 40 salary, compensation, or benefits of employees during a budget
- 41 process.
- 42 (10) When considering the appointment of a public official, to do
- 43 the following:
- 44 (A) Develop a list of prospective appointees.
- 45 (B) Consider applications.
- 46 (C) Make one (1) initial exclusion of prospective appointees
- 47 from further consideration.
- 48 Notwithstanding IC 5-14-3-4(b)(12), a governing body may release
- 49 and shall make available for inspection and copying in accordance
- 50 with IC 5-14-3-3 identifying information concerning prospective
- 51 appointees not initially excluded from further consideration. An

initial exclusion of prospective appointees from further consideration may not reduce the number of prospective appointees to fewer than three (3) unless there are fewer than three (3) prospective appointees. Interviews of prospective appointees must be conducted at a meeting that is open to the public.

(11) To train school board members with an outside consultant about the performance of the role of the members as public officials.

(12) To prepare or score examinations used in issuing licenses, certificates, permits, or registrations under IC 15-5-1.1 or IC 25.

(c) A final action must be taken at a meeting open to the public.

(d) Public notice of executive sessions must state the subject matter by specific reference to the enumerated instance or instances for which executive sessions may be held under subsection (b). The requirements stated in section 4 of this chapter for memoranda and minutes being made available to the public is modified as to executive sessions in that the memoranda and minutes must identify the subject matter considered by specific reference to the enumerated instance or instances for which public notice was given. The governing body shall certify by a statement in the memoranda and minutes of the governing body that no subject matter was discussed in the executive session other than the subject matter specified in the public notice.

(e) A governing body may not conduct an executive session during a meeting, except as otherwise permitted by applicable statute. A meeting may not be recessed and reconvened with the intent of circumventing this subsection.

SECTION 3. IC 5-14-3-4, AS AMENDED BY P.L.1-2002, SECTION 17, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 4. (a) The following public records are excepted from section 3 of this chapter and may not be disclosed by a public agency, unless access to the records is specifically required by a state or federal statute or is ordered by a court under the rules of discovery:

(1) Those declared confidential by state statute.

(2) Those declared confidential by rule adopted by a public agency under specific authority to classify public records as confidential granted to the public agency by statute.

(3) Those required to be kept confidential by federal law.

(4) Records containing trade secrets.

(5) Confidential financial information obtained, upon request, from a person. However, this does not include information that is filed with or received by a public agency pursuant to state statute.

(6) Information concerning research, including actual research documents, conducted under the auspices of an institution of higher education, including information:

(A) concerning any negotiations made with respect to the research; and

(B) received from another party involved in the research.

(7) Grade transcripts and license examination scores obtained as part of a licensure process.

(8) Those declared confidential by or under rules adopted by the

supreme court of Indiana.

(9) Patient medical records and charts created by a provider, unless the patient gives written consent under IC 16-39.

(10) Application information declared confidential by the twenty-first century research and technology fund board under IC 4-4-5.1.

(11) The following personal information concerning a customer of a municipally owned utility (as defined in IC 8-1-2-1):

(A) Telephone number.

(B) Social Security number.

(C) Address.

(12) A photograph, a video recording, or an audio recording of an autopsy, except as provided in IC 36-2-14-10.

(b) Except as otherwise provided by subsection (a), the following public records shall be excepted from section 3 of this chapter at the discretion of a public agency:

(1) Investigatory records of law enforcement agencies. However, certain law enforcement records must be made available for inspection and copying as provided in section 5 of this chapter.

(2) The work product of an attorney representing, pursuant to state employment or an appointment by a public agency:

(A) a public agency;

(B) the state; or

(C) an individual.

(3) Test questions, scoring keys, and other examination data used in administering a licensing examination, examination for employment, or academic examination before the examination is given or if it is to be given again.

(4) Scores of tests if the person is identified by name and has not consented to the release of his scores.

(5) The following:

(A) Records relating to negotiations between the department of commerce, the Indiana development finance authority, the film commission, the Indiana business modernization and technology corporation, or economic development commissions with industrial, research, or commercial prospects, if the records are created while negotiations are in progress.

(B) Notwithstanding clause (A), the terms of the final offer of public financial resources communicated by the department of commerce, the Indiana development finance authority, the Indiana film commission, the Indiana business modernization and technology corporation, or economic development commissions to an industrial, a research, or a commercial prospect shall be available for inspection and copying under section 3 of this chapter after negotiations with that prospect have terminated.

(C) When disclosing a final offer under clause (B), the department of commerce shall certify that the information being disclosed accurately and completely represents the terms of the final offer.

(6) Records that are intra-agency or interagency advisory or

deliberative material, including material developed by a private contractor under a contract with a public agency, that are expressions of opinion or are of a speculative nature, and that are communicated for the purpose of decision making.

(7) Diaries, journals, or other personal notes serving as the functional equivalent of a diary or journal.

(8) Personnel files of public employees and files of applicants for public employment, except for:

(A) the name, compensation, job title, business address, business telephone number, job description, education and training background, previous work experience, or dates of first and last employment of present or former officers or employees of the agency;

(B) information relating to the status of any formal charges against the employee; and

(C) ~~information concerning the factual basis for a disciplinary action~~ **action** in which final action has been taken and that resulted in the employee being ~~disciplined~~ **suspended, demoted,** or discharged.

However, all personnel file information shall be made available to the affected employee or his representative. This subdivision does not apply to disclosure of personnel information generally on all employees or for groups of employees without the request being particularized by employee name.

(9) Minutes or records of hospital medical staff meetings.

(10) Administrative or technical information that would jeopardize a recordkeeping or security system.

(11) Computer programs, computer codes, computer filing systems, and other software that are owned by the public agency or entrusted to it and portions of electronic maps entrusted to a public agency by a utility.

(12) Records specifically prepared for discussion or developed during discussion in an executive session under IC 5-14-1.5-6.1. However, this subdivision does not apply to that information required to be available for inspection and copying under subdivision (8).

(13) The work product of the legislative services agency under personnel rules approved by the legislative council.

(14) The work product of individual members and the partisan staffs of the general assembly.

(15) The identity of a donor of a gift made to a public agency if:

(A) the donor requires nondisclosure of his identity as a condition of making the gift; or

(B) after the gift is made, the donor or a member of the donor's family requests nondisclosure.

(16) Library or archival records:

(A) which can be used to identify any library patron; or

(B) deposited with or acquired by a library upon a condition that the records be disclosed only:

(i) to qualified researchers;

(ii) after the passing of a period of years that is specified in the

1 documents under which the deposit or acquisition is made; or
 2 (iii) after the death of persons specified at the time of the
 3 acquisition or deposit.

4 However, nothing in this subdivision shall limit or affect
 5 contracts entered into by the Indiana state library pursuant to
 6 IC 4-1-6-8.

7 (17) The identity of any person who contacts the bureau of motor
 8 vehicles concerning the ability of a driver to operate a motor
 9 vehicle safely and the medical records and evaluations made by the
 10 bureau of motor vehicles staff or members of the driver licensing
 11 advisory committee. However, upon written request to the
 12 commissioner of the bureau of motor vehicles, the driver must be
 13 given copies of the driver's medical records and evaluations that
 14 concern the driver.

15 (18) School safety and security measures, plans, and systems,
 16 including emergency preparedness plans developed under 511
 17 IAC 6.1-2-2.5.

18 (c) Notwithstanding section 3 of this chapter, a public agency is not
 19 required to create or provide copies of lists of names and addresses,
 20 unless the public agency is required to publish such lists and
 21 disseminate them to the public pursuant to statute. However, if a public
 22 agency has created a list of names and addresses, it must permit a
 23 person to inspect and make memoranda abstracts from the lists unless
 24 access to the lists is prohibited by law. The following lists of names and
 25 addresses may not be disclosed by public agencies to commercial
 26 entities for commercial purposes and may not be used by commercial
 27 entities for commercial purposes:

- 28 (1) A list of employees of a public agency.
- 29 (2) A list of persons attending conferences or meetings at a state
 30 institution of higher education or of persons involved in programs
 31 or activities conducted or supervised by the state institution of
 32 higher education.
- 33 (3) A list of students who are enrolled in a public school
 34 corporation if the governing body of the public school corporation
 35 adopts a policy:
 - 36 (A) prohibiting the disclosure of the list to commercial entities
 37 for commercial purposes; or
 - 38 (B) specifying the classes or categories of commercial entities to
 39 which the list may not be disclosed or by which the list may not
 40 be used for commercial purposes.

41 A policy adopted under subdivision (3) must be uniform and may not
 42 discriminate among similarly situated commercial entities.

43 (d) Nothing contained in subsection (b) shall limit or affect the right
 44 of a person to inspect and copy a public record required or directed to
 45 be made by any statute or by any rule of a public agency.

46 (e) Notwithstanding any other law, a public record that is classified
 47 as confidential, other than a record concerning an adoption, shall be
 48 made available for inspection and copying seventy-five (75) years after
 49 the creation of that record.

50 (f) Notwithstanding subsection (e) and section 7 of this chapter:

- 51 (1) public records subject to IC 5-15 may be destroyed only in

- 1 accordance with record retention schedules under IC 5-15; or
- 2 (2) public records not subject to IC 5-15 may be destroyed in the
- 3 ordinary course of business.
- 4 **SECTION 4. An emergency is declared for this act.**
(Reference is to SB 169 as reprinted April 3, 2003.)

Conference Committee Report
on
Engrossed Senate Bill 169

Signed by:

Senator Lawson C
Chairperson

Representative Goodin

Senator Bowser

Representative Stine

Senate Conferees

House Conferees